



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

OCT - 5 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Robert P. Charrow
Greenberg Traurig
800 Connecticut Avenue, NW, Suite 500
Washington, DC 20006

Mark Schnapp
Greenberg Traurig
1221 Brickell Avenue
Miami, FL 33131

RE: MUR 5903
PBS&J Corporation

Dear Messrs. Charrow and Schnapp:

On March 7, 2007, the Federal Election Commission notified your client, PBS&J Corporation ("PBS&J"), of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("the Act"). A copy of the complaint was forwarded to your client at that time.

Upon further review of the allegations contained in the complaint, and publicly available information, the Commission, on September 11, 2007, found that there is reason to believe PBS&J knowingly and willfully violated 2 U.S.C. §§ 441b and 441f, provisions of the Act. The Factual and Legal Analysis, which formed a basis for the Commission's finding, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Statements should be submitted under oath.

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Please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.

If you have any questions, please contact Adam Schwartz, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Robert D. Lenhard
Chairman

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION
FACTUAL AND LEGAL ANALYSIS**

Respondent: PBS&J Corporation

MUR: 5903

I. BACKGROUND

This matter originated with a complaint filed by Maria M. Garcia alleging that PBS&J Corporation ("PBS&J"), violated the Federal Election Campaign Act of 1971, as amended (the "Act") by reimbursing the campaign contributions of its employees and their family members. The Complainant alleges that PBS&J, through a succession of former senior executives officers and accounting personnel, including the complainant, "knowingly" made prohibited corporate contributions to various political committees from the 1990s through the 2002 election by reimbursing personal contributions and the contributions of others in violation of 2 U.S.C. §§ 441b(a) and 441f.

PBS&J is a Florida-based government contractor that provides a range of services related to transportation, environmental, construction management, and civil engineering. In late March 2005, a PBS&J auditor reported to the Audit Committee that the company was the victim of embezzlement. Shortly thereafter, William S. DeLoach, the Chief Financial Officer, identified himself as one of the participants in the embezzlement scheme. Mr. DeLoach explained to the company how he, along with Maria Garcia, PBS&J's Business Information Systems Manager, and Rosario Licata, PBS&J's Accounts Payable Manager, conspired to embezzle more than \$35 million by issuing company checks to themselves, diverting money from the company healthcare benefit fund into secret bank accounts, charging personal expenses on the company credit card, and concealing the theft of these funds by altering and fabricating the company's books. In

1 connection with this embezzlement, Mr. DeLoach, Ms. Garcia and Ms. Licata pled guilty to a
2 felony count of conspiracy to commit mail fraud on September 28, 2006. Mr. DeLoach also pled
3 guilty to a felony violation of 2 U.S.C. § 441f, admitting that he knowingly and willfully made
4 \$11,000 in illegal contributions to the Martinez for Senate Committee through six straw donors
5 on October 4 and 5, 2004.

6 Ms. Garcia claims that, in addition to the 2004 contributions reimbursed by Mr. DeLoach,
7 PBS&J, through various corporate officers and employees, engaged in a "pattern of decade(s)
8 long illegal campaign violations, including reimbursement of respondent's employees, friends
9 and spouses for political contributions." In addition to Mr. DeLoach, Ms. Garcia alleges that Ms.
10 Licata and Richard Wickett, former Chief Financial Officer and Chairman of the Board of
11 Directors, were active participants in the contribution reimbursement scheme. Ms. Garcia alleges
12 that she was instructed by senior managers to reimburse employee campaign contributions by
13 preparing false documents with fictitious descriptions for the disbursements. Ms. Garcia states
14 that in March 2002, PBS&J reimbursed a \$2,000 contribution made by James Breland, a PBS&J
15 executive, to Sen. Max Cleland's reelection campaign.

16 Additional criminal filings involving the same actors indicate the mechanics and extent of
17 the potential violations. Specifically, on March 8, 2007, criminal charges alleging, among other
18 things, conspiracy to commit mail fraud and making false statements stemming from a corporate
19 reimbursement scheme that began in 1990, were filed against Mr. Wickett and H. Michael Dye, a
20 former PBS&J Chief Executive Officer. These documents allege that in 1990, Mr. Wickett and
21 Mr. Dye instructed their respective secretaries to open bank accounts entitled "PBS&J Out of
22 State PAC," but not to include the accounts in PBS&J's financial records. Mr. Wickett and Mr.

1 Dye then allegedly instructed their secretaries to have any reference to PBS&J removed from the
2 checks issued from these accounts. Thereafter, Mr. Wickett and Mr. Dye would approve
3 corporate disbursements to these accounts, and then use the funds to make contributions to
4 principal campaign committees. In other instances, Mr. Wickett and Mr. Dye would make
5 personal campaign contributions and then authorize PBS&J to make reimbursements through the
6 "Out of State PAC" bank accounts.

7 By 2000, the scope of the corporate scheme grew to encompass additional PBS&J
8 employees. According to the indictment, in 2000 and 2001, Mr. Wickett and Mr. Dye arranged
9 for certain PBS&J officers and directors to receive bonuses, but were informed that \$10,000 of
10 each bonus had to go to PBS&J's political action committees. In 2002, Mr. Wickett approached
11 PBS&J Regional Sales Managers and District Directors and asked them to make campaign
12 contributions to specific candidates in amounts ranging from \$500 to \$2,000. Mr. Wickett then
13 caused PBS&J to reimburse these contributions with notations such as "mileage reimbursement"
14 and "business development expense." Although the overall scope of the violation is not clear at
15 this time, the transactions detailed in the indictment involve over \$20,000 in corporate and
16 reimbursed contributions.

17 Finally, although it is unclear when Mr. DeLoach, an "up and comer in the company,"
18 joined the contribution reimbursement scheme, it appears he began participating in the broader
19 embezzlement scheme in 1999. By 2003, Mr. DeLoach, along with Ms. Garcia and Ms. Licata,
20 established a separate "PBS&J PAC" account unrelated to the company and began diverting
21 company funds to this account. Given that Mr. DeLoach has plead guilty to reimbursing \$11,000

1 in campaign contributions in 2004, it is likely that the funds to make the reimbursement came
2 from corporate funds diverted to a personal account.

3 All told, currently available information suggests that between 1990 and 2004, PBS&J
4 used corporate funds to reimburse over \$30,000 in campaign contributions. This amount does
5 not include any contributions made by PBS&J officers or directors as a result of the 2000 and
6 2001 bonuses or the approximately \$44,000 in contributions made to federal candidates by Mr.
7 DeLoach, Ms. Garcia, or Ms. Licata that may also have been reimbursed through the scheme.

8 **II. DISCUSSION**

9 Corporations are prohibited from using corporate resources to engage in campaign
10 fundraising activities. See 2 U.S.C. § 441b(a). A corporation can only act through its directors,
11 officers, and agents, and may be held liable for the acts of an employee within the scope of the
12 employment and that benefit the corporate employer. See *United States v. Wallach*, 935 F.2d
13 445, 462 (2d Cir. 1991); 1 William Meade Fletcher et al., *Fletcher Cyclopedia of the Law of*
14 *Private Corporations* § 30 (Supp. 2004). See, e.g., *Liquid Air Corp. v. Rogers*, 834 F.2d 1297,
15 1306 (7th Cir. 1987). The Act also provides that no person shall make a contribution in the name
16 of another person or knowingly permit their name to be used to effect such a contribution. 2
17 U.S.C. § 441f.

18 Available information supports the conclusion that Mr. DeLoach, Mr. Dye, and Mr.
19 Wickell's activities were part of a concerted effort by PBS&J to engage in campaign fundraising
20 activities. By creating a separate bank account and then funneling corporate funds into the
21 account, PBS&J was able to make thousands of dollars in campaign contributions over a thirteen
22 year period. In addition, as the scheme continued, the apparent scope broadened to include

1 additional officers and members of the board of directors. News accounts and publicly available
2 information suggest that Mr. DeLoach, an "up and comer in the company," joined the
3 contribution reimbursement scheme sometime between 1999 and 2004. In addition, the scheme
4 broadened again in 2000 and 2001 to encompass selected officers and board members who were
5 told to reserve a part of their bonus for political activity. The number of high-level PBS&J
6 employees and directors indicates a level of corporate malfeasance such that it would be
7 impossible to argue that the reimbursement scheme was simply the act of a few rogue employees.

8 The criminal proceedings against PBS&J's former officers and employees suggest that
9 PBS&J knowingly and willfully violated the Act. The knowing and willful standard requires
10 knowledge that one is violating the law. *See Federal Election Commission v. John A. Dranesi*
11 *for Congress Committee*, 640 F. Supp. 985, 987 (D. N.J. 1986); *see also* Federal Prosecution of
12 Election Offenses (6th Ed., 1995). An inference of a knowing and willful act may be drawn
13 "from the defendant's elaborate scheme for disguising" his or her actions. *United States v.*
14 *Hopkins*, 916 F.2d 207, 214-15 (5th Cir. 1990). Not only did PBS&J corporate executives and
15 employees establish separate bank accounts to make political contributions, but they disguised
16 reimbursements to employees by categorizing them as "mileage reimbursements" and "business
17 development expenses."

18 **III. CONCLUSION**

19 For the foregoing reasons, the Commission finds reason to believe PBS&J knowingly and
20 willfully violated 2 U.S.C. §§ 441b(a) and 441f.

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